SINGLE BENCH

(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 4291 OF 2005

PETITIONER: [Applicant/Plaintiff] — Govind lal Agarwal, aged about 49 years, son of Shri Ramgopal Agarwal, resident of Satti Bazar, Raipur.

Vs

RESPONDENT: [Non-applicant/ Defendant] — Jawaharlal Shrivastava, son of Shri Thakur Prasad Shrivastava, Proprietor- Jawahar Cycle Stores, Satti Bazar, Raipur.

R.R. No. 4424/05
Presented by B.P.Sharma
dated 31/8/05

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP No. 4291/08 **सन् 200**

(27)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

12.9.2005

Shri B.P. Sharma, counsel for the petitioner.

Heard.

As the petition can be disposed of without issuance of notice to the respondent, therefore, it is decided not to issue notice to the respondent. However, the respondent will be at liberty to move this Court by filing an application for modification of the order, if he feels aggrieved by this order.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India questioning the legality, propriety and correctness of order dated 26.4.2005 passed by learned 3rd Additional Judge to the Court of Civil Judge Class-I, Raipur in M.J.C. No.55/2002 filed in Civil Suit No.429-A/1984 decided on 11.9.1987.

Brief facts leading to filing of this writ petition are that the petitioner herein had filed a civil suit against the respondent herein, who was the tenant in the shop of petitioner, for eviction under Section 12 (1) (h) of the C.G. Accommodation Control Act, 1961 on the ground for reconstruction of shop. That civil suit came to be registered as Civil Suit No.429-A/1987 and learned Civil Judge decided that suit on 11.9.1987 in favour of the petitioner herein with a direction to the petitioner herein to construct the said shop within a period of six months and thereafter, deliver the possession to the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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respondent in terms of Section 18 of the C.G. Accommodation Control Act, 1961. In compliance of the order dated 11.9.1987 the respondent herein vacated the shop within the prescribed period of two months but when the petitioner failed to reconstruct the shop and put the respondent in possession, the respondent moved an application under Section 151 of the Code of Civil Procedure on 30.3.1994 for directing the petitioner herein to deliver the possession of the said shop. The petitioner herein replied to the said application and stated that as the shop in question was demolished by the petitioner and the land in question on which the rented shop was existing comes within 30 feet area from the middle line of the road in front of the petitioner's house and as per new master plan of Raipur city the landlords are not entitled to raise any construction within the 30 feet area from the middle line of the road, as such the petitioner was not able to construct the shop in question and deliver the possession to the respondent.

Learned trial Court vide impugned order observed that the petitioner has not placed any material on record or the map of the site showing that the land on which the rented shop was existing comes within the 30 feet area from the middle line of the road and that there is any such rule which requires that the construction cannot be raised within the 30 feet area from the middle line of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

road. Therefore, the Court directed the petitioner to reconstruct the said shop and put the respondent in possession.

Shri B.P. Sharma, Advocate for the petitioner argued that a time be granted to the petitioner to place on record the fact that the land in question comes within the 30 feet area from the middle line of the road and therefore, the petitioner is not entitled to construct the shop. He further submitted that if this order is allowed to stand it will be difficult for the petitioner to implement the same on the ground that as per existing byelaws of the Municipal Corporation the petitioner is not entitled to construct the shop.

Looking to the peculiar situation and facts & circumstances of the case, I am of the opinion that the prayer made by counsel for the petitioner requires consideration. In the circumstances, the order impugned is modified to the extent that the petitioner should approach the trial Court within 15 days from today and to file material before the trial Court within a period of two months thereafter to show that the land on which rented shop was existing, which has now been demolished, falls within 30 feet area from the middle line of the road and on account of byelaws of the Municipal Corporation he is not entitled to construct the shop. If the petitioner is able to prove that fact in that case the trial Court to consider the last limb of sub-section (3) of Section 18 of the C.G. Accommodation Control Act, 1961 which says that "*...or pay to the defendant such compensation as the*

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Court think fit'. If the petitioner is not entitled to construct the shop on the land in question then the Court should consider this aspect and after considering this aspect to pass appropriate orders looking to the facts and circumstances of the case. If the petitioner fails to establish the stand taken by him then the trial Court will be entitled to pass the order in terms of Section 18 of the C.G. Accommodation Control Act, 1961.

With the directions & observations aforesaid, the petition stands disposed of.

Consequently, M.(W.)P. No.3497/05 & I.A. No.7796/05 also stand disposed of.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

yashai/-